

## OPINION SUMMARY

### MISSOURI COURT OF APPEALS EASTERN DISTRICT

ROBERT BROWN, Appellant,	)	No. ED92836
	)	
vs.	)	Appeal from the Circuit Court
	)	of the City of St. Louis
MISSOURI DEPARTMENT OF	)	
FAMILY SUPPORT, Respondent.	)	Filed: November 24, 2009

Robert Brown ("Father") appeals the denial of his application for attorney's fees and expenses in a proceeding brought under the provisions of Section 536.087, RSMo 2000, against the Missouri Department of Social Services, Family Support Division ("the FSD"), after a hearing in which Father successfully contested the amount of past due child support. Father contends the agency erred (1) in denying his request for attorney's fees and expenses under Section 536.087, RSMo 2000, because Father prevailed in the agency proceeding, and (2) in holding the issue of substantial justification moot because the FSD waived the defense of substantial justification.

REVERSED AND REMANDED.

Division Two holds: Because Father obtained a favorable decision on a significant issue at the hearing, he was a prevailing party. Thus, the agency erred in finding Father was not the prevailing party and denying his request for attorney's fees and expenses on that ground. Further, the FSD did not waive the defense of substantial justification. However, because the agency did not make a determination as to whether the FSD was substantially justified, we remand for that determination.

Opinion by: Robert G. Dowd, Jr., J.  
Sherri B. Sullivan, P. J. and Patricia L. Cohen, J., concur.

Attorney for Appellant: Joseph A. Fenlon, Jr.

Attorneys for Respondent: Chris Koster, Todd R. Gampp

<p><b>THIS SUMMARY IS NOT PART OF THE OPINION OF THE COURT. IT HAS BEEN PREPARED FOR THE CONVENIENCE OF THE READER AND SHOULD NOT BE QUOTED OR CITED.</b></p>
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